

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1064
T-3055

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

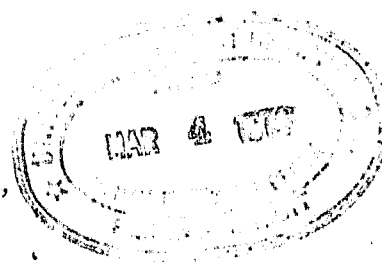
vs.

DONALD N. GERVASI,
Defendant-Appellant.

APPELLANT'S APPENDIX

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

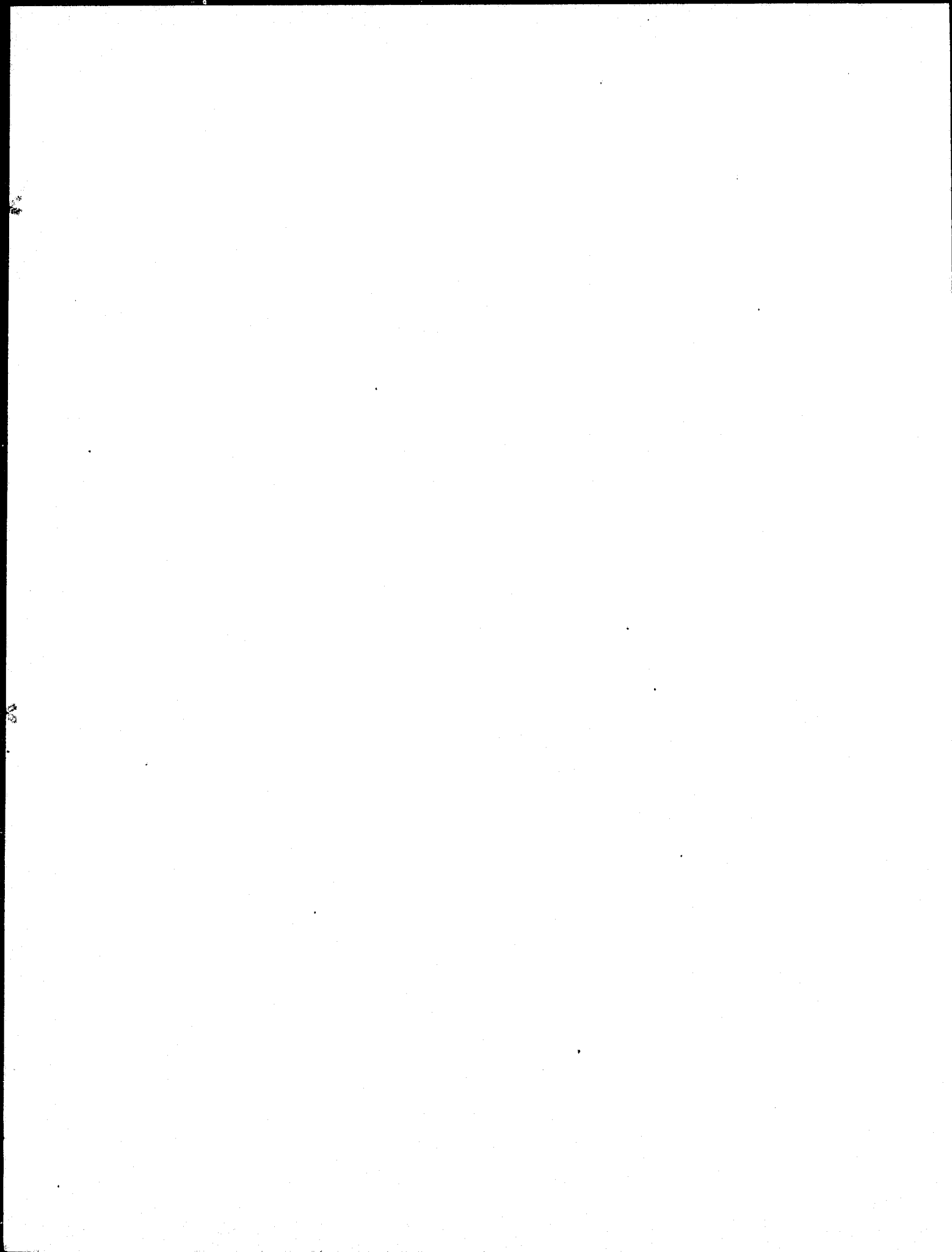
CHARLES J. McDONOUGH,
Attorney for Defendant-Appellant,
930 Walbridge Building,
Buffalo, New York 14202.



PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

	page
Relevant Docket Entries.	1
Indictment	3
District Court's Decision on Denial of Motion to Set Aside Verdict	6
Presentence Report	9
Judgment and Commitment.	16
Portions of Court's Charge <u>Re:</u> Entrapment.	18



Relevant Docket Entries.

JOHN O. KIMBLEY

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

CR-1972-110

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		/PHILIP Abramowitz/
DONALD N. GERVASI		Roger Williams, Esq
did sell counterfeit \$20.00 Federal Reserve Notes, knowing the same to be counterfeit, (Cts. 1, 3), ; knowingly possess counterfeit \$20.00 Federal Reserve Notes, (Cts. 2, 4), in violation of Section 472, Title 18, U.S.C.,		For Defendant: Charles McDonough, Esq.

STATISTICAL RECORD		COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed		Clerk	7/24/72	N 11830	500	5 00
J.S. 3 mailed		Marshal	7/28/72	9028		
Violation		Docket fee				
Title 18						
Sec. 472						

DATE	PROCEEDINGS
1972	
June 30	Filed Indictment
June 30	J.S. 2 made
July 10	Deft. being duly arraigned enters a plea of not guilty - motions ret. 7/24/1972
July 11	Filed Ct. Stenographer's minutes of 7/10/1972
July 14	Filed deft. Gervasi's notice of motion and affidavit for disclosure, suppression, directing the return of two automobiles, etc., ; bill of particulars; govt. to make available XNN to the deft. any and all exculpatory material, property or testimony under the rule of Brady v. Maryland, etc., ret. 7/24/1972
July 24	Court advises counsel to agree to a date for suppression hearing, and to advise the Ct. of the date agreed upon. Counsel to prepare and exchange briefs by 7/31/1972, on the question of
July 24	Filed affidavit of Phil Abramowitz - in response to Deft's motion papers 7/14/72
July 31	No appearance by deft. or counsel. papers to be submitted to the Court for consideration of return of cars
Sept. 21	Filed Magistrate's transcript with \$5,000 bond - Cosmopolitan Mutual Ins. Co., surety
Oct. 4	Filed Govt's motion to move action for trial
Nov. 13	Adj. 11/20/1972 - the Court instructs the Govt. to notify deft's

Relevant Docket Entries.

DATE	PROCEEDINGS
1972	
Nov. 13	counsel that motions are returnable that date, and if no motions case will be set for trial.
Nov. 20	Adj. 12/11/1972
Dec. 11	Adj. to January 8, 1972
1973	
Jan. 8	Court sets 1-22-73 for a suppression hearing.
Jan. 22	Adj. 1/29/1973 - 2/2/73 2/5/73
Feb. 5	Adj. generally to set a date and time for hearing
Mar. 19	Adj. 3/20/1973
Mar. 20	Hearing continued from 3/19/1973 - Motion by deft. to suppress admission after arrest- granted. motions to suppress fruits of search on taped telephone conversation- denied. Trial set for 5/8/1973
May 3	Filed Ct. Stenographer's transcript on proceedings on motion to suppress, commencing 3/19/1973 (2 Volumes)
June 18	Case set down for trial on 9/25/1973
Sept. 25	Govt. moves case to trial before Judge Henderson and Jury at Buffalo, New York - trial adj. until tomorrow, 9/26/1973
Sept. 26	Trial continues from yesterday with same appearances and jury---
Sept. 27	Trial continues with same appearances and jury----- The Court denies motions by deft. for dismissal and directed judgment of acquittal. -- trial adj. until tomorrow 9/28/1973.
Sept. 28	Trial continues with same appearances and jury--- The prosecution excepts to the charge on entrapment, as does the deft. The Court further charges jury on entrapment., jury deliberates - the jury returns the following verdict: Count One NOT GUILTY - ; Count Two - NOT GUILTY; - Count Three - NOT GUILTY Count Four - GUILTY - The jurors are polled, then discharged by Court. Deft. moves to set aside the verdict of guilty on Count Four as contrary to the law and inconsistent. The Court reserves Decision. Bail continued. Sentencing to be set later.
Oct. 16	Filed Decision and Order denying Deft's motion for an order setting aside the verdict of guilty on count four on the grounds that it was contrary to the weight of the evidence and inconsistent with the verdict of not guilty on the other three counts. The Court also concludes that the verdict was not contrary to the weight of the evidence introduced at trial--HENDERSON, J.
Nov. 26	Sentence - Adj. 12/3/1973
Dec. 3	For Sentence. Adj. 12/10/1973
Dec. 10	Sentence adj. to 12/17/1973
Dec. 17	Defendant appears for sentence, whereupon the Court sentences the deft. on Count Four to Seven (7) Years in an institution designated by the Attorney General--HENDERSON, J.
Dec. 17	J.S. 3 made
Dec. 17	Filed Judgment and Commitment - Commitment issued.
Dec. 18	Filed Ct. Steno's minutes of 12/17/1973
Dec. 27	Filed Deft's. Notice of Appeal (copy to U.S. Atty., deft. and to Clerk, CCA with copy of docket entries) 12/27/73 12/27/73 12/27/73 12/27/73
1974	
Jan. 10	Filed Order from the CCA that the record on appeal be docketed on or before January 16, 1974, etc.
Jan. 14	Orig. pertinent papers, Clerk's certificate, cy. of docket entries, mailed to the Clerk, CCA
Jan. 21	Filed Court Stenographer's transcript of trial (3 Volumes)
Jan. 22	Ct. Steno's transcript of trial (Volumes 1, 2, 3). Suppl. Clerk's certificate, Suppl. Index, docket entries, mailed to the Clerk, CCA

CLOSED

Indictment.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-VS-

CR 1972 119

DONALD N. GERVASI

COUNT I

The Grand Jury charges:

That on or about the 19th day of June, 1972, in the Western District of New York, the defendant, DONALD N. GERVASI, with intent to defraud, did sell to Samuel J. Zona certain counterfeit obligations of the United States of America, namely, approximately \$10,000.00 of counterfeit \$20.00 Federal Reserve Notes, Federal Reserve Bank of New York, and the defendant, DONALD N. GERVASI, then knew that said obligations were counterfeit; all in violation of T. 18, United States Code, Section 472.

COUNT II

The Grand Jury further charges:

That on or about the 19th day of June, 1972, in the

Indictment.

-2-

Western District of New York, the defendant, DONALD N. GERVASI, with intent to defraud did knowingly possess approximately \$10,000.00 of counterfeit \$20.00 Federal Reserve Notes, Federal Reserve Bank of New York; all in violation of T. 18, United States Code, Section 472.

COUNT III

The Grand Jury further charges:

That on or about the 28th day of June, 1972, in the Western District of New York, the defendant, DONALD N. GERVASI, with intent to defraud, did sell to Samuel J. Zona certain counterfeit obligations of the United States of America, namely, approximately \$50,000.00 of counterfeit \$20.00 Federal Reserve Notes, Federal Reserve Bank of New York, and the defendant, DONALD N. GERVASI, then knew that said obligations were counterfeit; all in violation of Title 18, United States Code, Section 472.

COUNT IV

The Grand Jury further charges:

That on or about the 28th day of June, 1972, in the

Indictment.

-3-

Western District of New York, the defendant, DONALD N. GERVASI, with intent to defraud did knowingly possess approximately \$50,000.00 of counterfeit \$20.00 Federal Reserve Notes, Federal Reserve Bank of New York; all in violation of Title 18, United States Code, Section 472.

C. DONALD O'CONNOR
ACTING UNITED STATES ATTORNEY

A TRUE BILL:

John J. Clark 3rd
Foreman

District Court's Decision on Denial of Motion
to Set Aside Verdict.

DISTRICT COURT'S DECISION ON DENIAL OF MOTION TO SET
ASIDE VERDICT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

CR 1972-119

DONALD N. GERVASI

APPEARANCES: JOHN T. ELFVIN, ESQ., United States
Attorney (ROGER P. WILLIAMS, ESQ.,
Assistant United States Attorney,
of Counsel), for the Government.

CHARLES J. McDONOUGH, ESQ., Buffalo,
New York, for Defendant.

The above named defendant was tried on
September 25 through September 28, 1973 on a four-
count indictment charging him with possession and sale
of counterfeit currency in violation of 18 U.S.C. § 472.
Counts one and three of the indictment charged the de-
fendant with sales of counterfeit currency on two sep-
arate occasions. Counts two and four charged him with
possession of the amounts of counterfeit currency he
was alleged to have sold in counts one and three.

The jury returned a verdict of not guilty
on counts one, two and three but guilty on count four.

District Court's Decision on Denial of Motion
to Set Aside Verdict.

- 2 -

Following the announcement of the verdict, counsel for the defendant moved, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, for an order setting aside the verdict of guilty on count four on the grounds that it was contrary to the weight of the evidence and inconsistent with the verdict of not guilty on the other three counts.

It is a well settled principle of law that the verdict of a jury need not be consistent. Dunn v. United States, 284 U.S. 390 (1932); Steckler v. United States, 7 F.2d 59 (2d Cir. 1925); United States v. Carbone, 378 F.2d 420 (2d Cir. 1967).

The Court in Dunn quoted with approval the following language from the Steckler opinion:

"The most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as no more than their assumption of a power which they had no right to exercise, but to which they were disposed through lenity." (p.60)

The court concludes that if the verdict is inconsistent, it need not be set aside. From the evidence

District Court's Decision on Denial of Motion
to Set Aside Verdict.

- 3 -

introduced at trial, however, it is possible for the jury to have reached its verdict in this case in a consistent manner. The defense put forth in this case was that of entrapment. The defendant contended that on each occasion charged in the indictment, he was induced to obtain possession of the counterfeit currency, and to sell it to an undercover agent, by the representation of that agent. For the jury to conclude that the defendant was entrapped, they must have been satisfied that he was induced to commit the crime and that he lacked the propensity to commit the crime. It is conceivable that the jury could have concluded that, with respect to count four alleging possession of counterfeit currency, the defendant was not unlawfully entrapped.

The court also concludes that the verdict was not contrary to the weight of the evidence introduced at trial.

For the foregoing reasons, the motion of the defendant is denied.

It is so ordered.

/s/ John O. Henderson

JOHN O. HENDERSON
United States District Judge

DATED: Oct. 16, 1973.

Presentence Report.

PROBATION FORM 28
FEB 65UNITED STATES DISTRICT COURT
Western District of New York
PRESENTENCE REPORTNAME **DONALD NICHOLAS GERVASI**DATE **October 19, 1973**ADDRESS **47 Patsy Lane
Depew, New York 14043**DOCKET NO **Cr 1972-119**LEGAL RESIDENCE
SameOFFENSE **UTTERING COUNTERFEIT
OBLIGATIONS OR SECURITIES:
vio. T. 18 USC Sec.472**AGE **30** DATE OF BIRTH **11-7-42**
Hamburg, New YorkPENALTY **15 yrs. a/o \$5,000 fine**SEX **Male** RACE **White**CITIZENSHIP **United States**PLEA **Guilty to Count I on
9-28-73**EDUCATION **9 Grades**

VERDICT

MARITAL STATUS **Married**CUSTODY **Released on 6/28/72 on
\$5,000 surety bond**DEPENDENTS **Wife & 3 children**ASST. U.S. ATTY **Roger P. Williams**SOC. SEC. NO **066-32-0619**DEFENSE COUNSEL **Charles J. McDonough
(retained)**FBI NO. **989 714 J6**DETAINERS OR CHARGES PENDING: **None**CODEFENDANTS (Disposition) **None**

DISPOSITION

DATE

SENTENCING JUDGE **Honorable John O. Henderson**

Presentence Report.

RE: DONALD N. GERVASI

1.

OFFENSE:

A Federal Grand Jury in the May 1972 Session of Federal Court returned a four count Indictment charging the defendant Donald N. Gervasi with uttering counterfeit obligations or securities of the United States.

After a jury trial, the defendant was found guilty as to Count 1 on September 28, 1973, and was found not guilty on Counts 2, 3 and 4.

Count 1 of the Indictment charges that on or about June 19, 1972, in the Western District of New York, the defendant Donald N. Gervasi, with intent to defraud, did sell to Samuel J. Zona, certain counterfeit obligations of the United States of America, namely, approximately \$10,000 of counterfeit \$20 Federal Reserve Notes, Federal Reserve Bank of New York, and the defendant, Donald N. Gervasi, then knew that said obligations were counterfeit; all in violation of Title 18, U.S.C., Section 472.

This trial was held before the Honorable John O. Henderson, U.S. District Judge for the Western District of New York at Buffalo, New York, and subsequent to the defendant's conviction on Count 1, Judge Henderson deferred imposition of sentence on Count 1 and directed that a probation report be made.

Official Version. On June 16, 1972, a confidential informant of the U.S. Secret Service advised that Donald Gervasi, owner of an Arco Service Station located on the corner of Main Street and Transit Road, Williamsville, New York, was dealing in counterfeit \$20 Federal Reserve Notes. The informant had been arrested while attempting to pass the subject notes and stated that his source for the counterfeit notes, which he was arrested for, was one Donald Gervasi.

On June 19, 1972, Special Agent Samuel J. Zona, U.S. Secret Service, acting in an undercover capacity and being introduced by the aforementioned informant, bought

Presentence Report.

RE: DONALD N. GERVASI

2.

OFFENSE: -Cont'd.

\$9,980.00 in counterfeit \$20 Federal Reserve Notes from Donald Gervasi for \$1,000 genuine currency.

During this transaction, Gervasi stated to the undercover agent that he had sold \$40,000 in the counterfeit \$20 FRN's to a friend of his who passed the notes successfully on the West Coast.

On June 28, 1972, Gervasi was arrested as he delivered approximately \$50,000 in counterfeit \$20 FRN's to two undercover agents of the Secret Service. Subsequent to his arrest, Gervasi was released on June 28, 1972, on surety bail in the amount of \$5,000.

DEFENDANT'S VERSION OF OFFENSE:

Defendant was advised of his right to make a statement concerning this offense as he sees it. He was told, however, that before submitting any statement to this office for attachment to the presentence report to have the approval of his attorney for making such statement. If statement is submitted, it will be attached to this report.

PRIOR RECORD: FBI No. 989 714 J6

9-19-67

Buffalo, N.Y.

ASSAULT, 2nd

No Disposition.

6-28-72

Buffalo, N.Y.

PRESENT OFFENSE

Disposition Pending.

Presentence Report.

RE: DONALD N. GERVASI

3 .

FAMILY HISTORY:

The defendant, Donald Nicholas Gervasi, of 47 Patsy Lane, Depew, New York, was born in Hamburg, New York on November 7, 1942. He is one of two children born to his parents, Michael and Irene Ryder Gervasi.

The defendant's father, Michael Gervasi, 61 years of age, resides at 74 Southwood Drive, West Seneca, N.Y. According to the defendant, his father has been an employee of Bethlehem Steel Corporation for over 40 years.

Defendant's mother is 52 years of age. She resides at 249 West Ferry Street, and she is employed at Loblaws Supermarket, but she is presently on sick leave suffering from heart trouble. The defendant says his mother has at least 15 years service with Loblaws.

Defendant has a brother, Michael Gervasi, 34 years of age, married and has three children. This brother lives in East Aurora, New York and his present occupation is unknown to the defendant.

The defendant's parents have been separated for the past thirteen years.

MARITAL HISTORY:

The defendant has been married on two occasions. His first wife, Lorraine Wisniewski, and the defendant were married in Buffalo, New York on February 15, 1963. From this union there are two children, Richard, age 10 and Ronald, age 7. Both of these children are with their mother on Arnold Street, Lackawanna, New York.

The defendant's first marriage ended in divorce in 1969 and the Decree of Divorce provides that he pay for the support of two children, at the rate of \$37.50 weekly, and in addition, pay for the personal needs of these children.

Presentence Report.

RE: DONALD N. GERVASI

4.

MARITAL HISTORY: -Cont'd.

A review of Family Court records indicate that this first marriage was a stormy one, beginning with the marriage itself, the wife being four months pregnant at the time of marriage. Family Court records relate that at first this couple lived with defendant's mother, and from the beginning they never got along. About two or three months after their marriage, the wife accused Subject of running around with other girls. He also allegedly squandered his money by "fooling around with stock cars", neglecting to support his wife and the baby adequately. Family Court ordered support for the defendant's wife and child at the rate of \$25.00 a week. There was also an Order of Protection granted the wife beginning September 21, 1964. On August 16, 1965, Gervasi's wife requested the case be closed as they had reconciled and were now living together again.

The defendant's second wife is Lorraine Payne. They were married on July 18, 1970 at Buffalo, New York and from this marriage there is one child, Donald, Jr., seven months old.

The defendant and his present wife are living a compatible married life.

HOME & NEIGHBORHOOD:

The defendant, his wife and child reside in a home purchased by the defendant some three years ago located at 47 Patsy Lane, Depew, N.Y. Defendant advised he purchased this home for \$23,000 and that he has a \$13,000 mortgage on this home. This dwelling is a split level single house and the monthly mortgage payment is \$188.00. The defendant states that this housing is adequate for the family needs.

Presentence Report.

RE: DONALD N. GERVASI

5.

EDUCATION:

After completing an elementary grade school education at West Seneca Junior High School, the defendant began his high school education at West Seneca Senior High School. He stated that he became uninterested in education and left while in his Freshman Year to go to work.

RELIGION:

Gervasi says he was raised as a Roman Catholic, but in recent years he is only an occasional attendant at religious services. He advised that on the occasions when he does attend church, he usually goes to Blessed Sacrament Church in Cheektowaga, N.Y.

HEALTH:

This 30 year old defendant is 5' 11" tall, weighs 172 pounds, has brown eyes and black hair.

Identifying marks consist of a tattoo on left forearm in which he spells out his nickname, Don.

The defendant denies the use of drugs and admits to being but a social drinker of alcoholic beverages.

He states that he has always enjoyed good health, with the exception of periodic pains in the left leg resulting from a car accident in which he sustained this injury when he was but 11 years of age. This condition was further aggravated some ten years ago when his left leg was broken when he was participating in auto racing meets.

The defendant's family enjoys good health, although his younger son, Ronald, age 7, from the first marriage, is suffering from a diabetic condition resulting in a vision problem requiring that he attend special schooling for his educational pursuits.

Presentence Report.

RE: DONALD N. GERVASI

6.

EMPLOYMENT: -Social Security No. 066-32-0619

Beginning in July 1973 Gervasi began part time employment as a truck driver with the Reliance Company, manufacturers and distributors of plumbing and heating supplies. During the month of October 1973 he was given full time employment and his average weekly wage is \$300.00. (See attached letter from David Blum, general manager of Reliance Company.)

From 1966 to April 1, 1973 Gervasi owned and operated Don's Arco Service Station, Main Street and Transit Road, Williamsville, N.Y. He stated that he took a weekly draw averaging \$200.00 during the period of operation of this station.

Gervasi stated that during the period of 1963-1966 he was an iron worker, working out of Iron Workers Union - Local 6.

Mrs. Gervasi also was employed for a period of four years as a reservations clerk for American Airlines. She was earning gross weekly wages of \$130.00. She discontinued outside employment in January 1973.

MILITARY SERVICE: Serial No. 536 9783

Gervasi served with the U.S. Navy from February 15, 1960 to November 30, 1961. He performed no active duty during this enlistment. He received an Honorable Discharge and his rating at time of discharge was SR, USNR-R.

FINANCIAL:

Assets. - Market Value of house \$30,000 (original purchase price \$23,000) 1972 Dodge Charger value \$2800.00; two Tow Trucks value \$8,000; garage equipment value \$3,000.

Debts. - Bank loan \$2200.

Respectfully submitted,

EDWARD T. FLANIGAN
Chief U.S. Probation Officer

Judgment and Commitment.

JUDGMENT AND COMMITMENT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

Indictment No.
Cr-1972-119

DONALD N. GERVASI

On this 17th day of December, 1973 came the attorney for the government and the defendant appeared in person and with counsel.

It is ADJUDGED that the defendant upon a verdict of guilty on September 28, 1973 has been convicted of the offense of knowingly possess counterfeit \$20.00 Federal Reserve Notes, in violation of Section 472, Title 18, U.S.C. as charged in Count Four and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized represen-

Judgment and Commitment.

-2-

tative for imprisonment for a period of seven years in an institution designated by the Attorney General.
Defendant was found Not Guilty on Counts One, Two and Three.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JOHN O. HENDERSON,
United States District Judge

JOHN K. ADAMS
Clerk

APPROVED: JOHN T. ELFVIN, U.S. Atty.

By: ROGER P. WILLIAMS
Assistant U.S. Atty.

Portions of Court's Charge Re: Entrapment.

PORTIONS OF
COURT'S CHARGE
RE: ENTRAPMENT

341

bringing out some financial gain to
oneself. The evidence need not show
that anyone was actually defrauded,
but only that the accused acted with
the intent to defraud.

The defendant asserts that he was
a victim of entrapment as to the
offenses charged in Courts I and III
of the indictment, alleging sales
of counterfeit money.

The defendant contends that there
has been testimony offered in this
case to show that agents of the
United States Government induced or
procured the commission of the offenses
charged in Counts I and III, alleging
sales of this counterfeit money.
This testimony is to be considered
by you as follows, to determine
whether the accused was entrapped
by the Government.

When a person has no previous
intent or purpose to violate the law,
but is induced or persuaded by
law enforcement officers or their
agents to commit a crime, he is a
victim of entrapment, and the law

Portions of Court's Charge Re: Entrapment.

342

1 as a matter of policy forbids his
2 conviction in such a case.

3 On the other hand, where a person
4 already has the readiness and willing-
5 ness to break the law, the mere fact
6 that Government agents provide what
7 appears to be a favorable opportunity,
8 is not entrapment. For example, when
9 the Government suspects that a person
10 is engaged in the illicit sale of
11 counterfeit currency, it is not
12 entrapment for a Government agent to
13 pretend to be someone else and to
14 offer, either directly or through an
15 informer or other decoy, to purchase
16 counterfeit currency from such
17 suspected person.

18 If then the jury should find
19 beyond a reasonable doubt from the
20 evidence in the case that, before
21 anything at all occurred respecting
22 the alleged offense involved in
23 Count I and III, the defendant was
24 ready and willing to commit crimes
25 such as charged in these counts, that
26 is, to sell counterfeit money, when-
27 ever opportunity was afforded, and

Portions of Court's Charge Re: Entrapment.

343

1 that Government officers or their
2 agents did no more than offer the
3 opportunity, then the jury should
4 find that the defendant is not a
5 victim of entrapment.

6 On the other hand, if the evidence
7 in the case should leave you with
8 a reasonable doubt whether the
9 defendant had the previous intent or
10 purpose to commit any offense of the
11 character here charged, and did so
12 only because he was induced or
13 persuaded by some officer or agent
14 of the Government, then it is your
15 duty to acquit him.

16 There are certain rules of law,
17 some of which I have already mentioned,
18 which are common to all criminal
19 cases, and which you must apply in
20 reviewing the evidence which is
21 before you.

22 A basic rule in all criminal
23 cases is that a defendant is presumed
24 to be innocent. That presumption
25 of innocence remains with the
26 defendant throughout the trial and
27 continues to exist until such time,

* * *

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recess.

(Thereupon the court was in recess,
awaiting the return of the jury, at
11:57 a.m.)

(Thereupon jury returned to the
courtroom at 12:50 p.m.)

(Defendant present, counsel present.)

THE COURT:

Mr. Janik, you are the foreman of
the jury?

FOREMAN:

Yes, sir.

THE COURT:

Mr. Janik, you sent me this note,
which I have marked Court Exhibit 3,
"Could we please have a written
statement of the law of entrapment?"
Is that the note?

FOREMAN:

Yes, sir.

THE COURT:

Now, ladies and gentlemen, I cannot
send you copies of the charge or
copies of excerpts from the charge,
but I would be happy to read it to you
again. That is the reason I prepare
it and preserve it, so I can read it
back in the form I read it in the

Portions of Court's Charge Re: Entrapment.

364

1 first place, if you still in your
2 deliberations have further questions.
3 I will read it again. Would you like
4 it read?
5 FOREMAN: Yes, sir.
6 THE COURT: All right. Now, there is one revision.
7 I originally charged that the law of
8 entrapment to be considered by you
9 is applicable only to Counts I and III,
10 which concern the alleged sale of
11 counterfeit money. I was requested
12 to reconsider that, and I have, and
13 before you retired I told you that
14 the defense of entrapment should be
15 considered in connection with each
16 count, the two counts alleging sales
17 and the two counts alleging possession.
18 So to that extent I have revised
19 what I read you in the first instance.
20 You remember that I charged you before
21 you finally retired that the additional
22 two counts were to be considered
23 when you considered the law of
24 entrapment. This is the way I charged
25 you with respect to that revision:
26 "The defendant asserts that he
27 was a victim of entrapment as to the

Portions of Court's Charge Re: Entrapment.

365

1 "offenses charged in Counts I, II,
2 III and IV of the indictment, alleging
3 sales and possession of counterfeit
4 money.

5 The defendant contends that there
6 has been testimony offered in this
7 case to show that agents of the
8 United States Government induced or
9 procured the commission of the
10 offenses charged in Counts I, II,
11 III and IV. This testimony is to
12 be considered by you as follows to
13 determine whether the accused was
14 entrapped by the Government.

15 Where a person has no previous
16 intent or purpose to violate the
17 law, but is induced or persuaded by
18 law enforcement officers or their
19 agents to commit a crime, he is a
20 victim of entrapment, and the law
21 as a matter of policy forbids his
22 conviction in such a case.

23 On the other hand, where a person
24 already has the readiness and willing-
25 ness to break the law, the mere fact
26 that Government agents provide what
27 appears to be a favorable opportunity,

Portions of Court's Charge Re: Entrapment.

366

1 "is not entrapment. For example,
2 when the Government suspects that a
3 person is engaged in the illicit sale
4 of counterfeit currency, it is not
5 entrapment for a Government agent to
6 pretend to be someone else and to
7 offer, either directly or through
8 an informer or other decoy, to
9 purchase counterfeit currency from
10 such suspected person.

11 If then the jury should find
12 beyond a reasonable doubt from the
13 evidence in the case that, before
14 anything at all occurred respecting
15 the alleged offense involved in
16 Counts I, II, III and IV, the
17 defendant was ready and willing to
18 commit crimes such as charged in those
19 counts, whenever opportunity was
20 afforded, and that Government officers
21 or their agents did no more than
22 offer the opportunity, then the jury
23 should find that the defendant is
24 not a victim of entrapment.

25 On the other hand, if the evidence
26 in the case should leave you with a
27 reasonable doubt whether the

Portions of Court's Charge Re: Entrapment.

367

1 "defendant had the previous intent or
2 purpose to commit any offense of the
3 character here charged, and did so
4 only because he was induced or
5 persuaded by some officer or an
6 agent of the Government, then it is
7 your duty to acquit him."

8 That was the end of that dis-
9 cussion. Do you think you can
10 resume your deliberations? That is
11 all I can tell you about the law of
12 entrapment. I read you what I read
13 before. You know all of the evidence
14 in the case, these are the rules
15 that are applicable, and you should
16 take it into consideration. Now,
17 if for any reason you want to hear
18 that again, all you have to do is
19 request it. Do you wish to retire
20 now?

21 FOREMAN:

Yes.

22 THE COURT:


All right.

23
24 (Thereupon the jury exited the
25 courtroom at 12:57 p.m.)
26

27 THE COURT:

Mark that Court Exhibit 3. I take it

Service of three (3) copies of within Appendix
Admitted March 4 1974.


A. F. Cotton
Western District of N.Y.